

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2745

IN THE MATTER OF:

Served August 7, 1985

Application of CLARENCE B. NELSON )  
T/A MINI-BUS LIMOUSINE AND SCHOOL )  
BUS SERVICE to Conduct Charter )  
Operations )

Case No. AP-85-17

By application filed April 5, 1985, Clarence Nelson trading as Mini-Bus Limousine and School Bus Service seeks a certificate of public convenience and necessity to transport passengers and their baggage, in charter operations, between points in the Metropolitan District, 1/ restricted to transportation performed in vehicles with a manufacturer's designed seating capacity of 29 passengers or less, excluding the driver. 2/

The application was set for public hearing to commence June 13, 1985, by Order No. 2696, served April 16, 1985, and incorporated herein by reference. At the hearing, Mr. Nelson testified on behalf of the applicant and presented four public witnesses in support of the application. Although The Airport Connection, Inc., timely filed a protest to the application and appeared by counsel at the hearing, it withdrew as a party following Mr. Nelson's testimony and without conducting any cross-examination. Thus, the application stands unprotested.

SUMMARY OF TESTIMONY

Clarence B. Nelson, sole proprietor of Mini-Bus Limousine and School Bus Service, testified on behalf of the applicant. According to Mr. Nelson, applicant's service is intended to offer personalized transportation to passengers with pre-arranged schedules. Mr. Nelson owns three vehicles: a 1979 14-passenger van, a 1979 19-passenger van,

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1/ To the extent this application could be construed to seek authority between points solely within Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b).

2/ By Order Nos. 2681 and 2702, served March 8 and May 9, 1985, respectively, applicant was granted temporary authority to perform this same type of transportation. The temporary authority became effective March 20, 1985, and expires September 16, 1985.

and a 1985 29-passenger minibus. All vehicles are registered in the District of Columbia, and a certificate of insurance is on file with the Commission. Applicant follows a program of routine preventive maintenance including checking of oil, tires, brakes, lights, and windshield wipers. Repairs are performed at dealer-authorized maintenance centers. If this application is granted, it is Mr. Nelson's intention to replace his older equipment. The proposed service would be operated using five drivers, one of whom would be Mr. Nelson. Mr. Nelson's wife handles all office work. Office back-up is provided by Mr. Nelson and a live answering service.

Applicant's proposed tariff lists rates of \$25 an hour for the 14-passenger van, \$27.50 an hour for the 19-passenger van, and \$36.50 an hour for the 29-passenger van. A four-hour minimum is to be charged April through October, and a three-hour minimum is to be charged November through March. Additional tariff provisions include a 72-hour cancellation clause, a 10 percent discount for senior citizens, and provision of equipment only when "confirmed in advance." Mr. Nelson agreed to clarify the circumstances under which a reservation would be considered confirmed.

Mr. Nelson testified that he first heard of the Commission as the result of a United States Park Police citation given to one of his drivers while performing transportation on the Mall. Mr. Nelson was subsequently contacted by the Commission, and on his counsel's advice, ceased operations with the exception of transporting children to and from school. According to Mr. Nelson, the \$10,172 in charter revenue for the 10-month period ended March 1, 1985, noted on a supplemental filing required by Order No. 2696, supra, represented revenues from those school bus operations.

Richard Daniels, of the accounting firm R. Daniels and Associates, sponsored revised financial statements pertaining to applicant's operations. An operating statement for the three-month period ended May 31, 1985, indicated revenue of \$18,689 and expenses of \$14,594, resulting in net operating income of \$4,095. The balance sheet as of May 31, 1985, sponsored by Mr. Daniels indicated total assets of \$70,926, including tangible property valued at \$61,875; total liabilities of \$24,055; and owner's equity of \$46,871. The revised statement of revenue and revenue deductions for the first 12 months of operations of the proposed service projects \$28,756 revenues and \$15,400 expenses.

Ms. Abby Yochelson, program assistant at the Academy for Educational Development ("the Academy"), testified regarding the Academy's support for Mr. Nelson's application. The Academy is a private non-profit educational organization which, inter alia, contracts with the United States Information Agency ("USIA") to plan and implement projects in various subject areas for persons in the United States on one-month USIA-sponsored visits. In her capacity as program assistant, Ms. Yochelson arranges transportation throughout

Washington for groups varying in size from nine to 30. In fiscal year 1985 Ms. Yochelson anticipates need for transportation for about 10 such groups. In fiscal year 1986 Ms. Yochelson anticipates the need for transportation for nine to 12 such groups. Each group is in Washington from six to 10 days and requires point-to-point transportation within Washington, and occasionally between Washington and Montgomery or Prince George's Counties, Md., as well as area sightseeing tours and airport transfers between Washington, D.C., and Washington National Airport. Ms. Yochelson has used other carriers most of which have been limited to 14-passenger vans. She is interested in Mr. Nelson's service because it can transport a relatively large group at less expense than hiring a full-size bus.

Ms. Yochelson testified that she has used Mr. Nelson's service and found it to be reliable and cost-effective. On cross-examination she testified that she had booked service with Mr. Nelson in late February. However, that service was provided in vehicles and by drivers other than Mr. Nelson's.

Ms. Belinda Minor was authorized to testify in support of the application on behalf of the Visitor Program Service ("VPS"), Meridian House International, Washington, D.C. VPS is a private, non-profit educational organization which arranges professional programs and travel in the United States for foreign dignitaries in this country on 30-day grants. Ms. Minor is one of a group of program assistants, and her duties in that capacity include arrangement of necessary transportation for participants in VPS programs. According to Ms. Minor, VPS requires transportation throughout the Metropolitan District for groups ranging in size from five persons to 50. Ms. Minor did not require Mr. Nelson's service in January or February 1985. Other persons at VPS did request Mr. Nelson's service during that time. However, although service was provided through Mr. Nelson, he did not drive the vehicle -- something he usually does for the agency -- and it was not the same vehicle he usually uses. It was Ms. Minor's opinion that the service had been subcontracted.

Ms. Minor testified that Mr. Nelson's services have been frequently used in the past and have been rated favorably by escort interpreters. Ms. Minor's transportation needs, while primarily within the District of Columbia, also include airport transfers to Dulles and National Airports and occasional transportation into Montgomery and Prince George's Counties, Md., and suburban Virginia.

Mr. Julio Orrala, manager of Sahara Limousine Service, Washington, D.C., testified in support of the application. From time to time, Sahara's customers require vans or mini-buses for transportation between points within the District of Columbia. When this occurs, Mr. Orrala arranges to have the work provided by applicant. Mr. Orrala prefers Mr. Nelson's service to service offered by other carriers which own vans.

Patricia Leffson of the Alumnae Association of Trinity College, Washington, D.C., testified in support of the application. In the course of her duties at Trinity, Ms. Leffson has occasion to arrange transportation for association events including an annual reunion involving shuttle transportation throughout the Washington area for 750 persons. For the most recent reunion, Ms. Leffson hired a 14-passenger van, a 19-passenger van, a 29-passenger mini-bus, and a 40-passenger school bus. These vehicles were procured through the applicant. Ms. Leffson did not notice any identifying marks on the school bus but was under the impression that not all vehicles provided were owned by Mr. Nelson. Mr. Nelson has provided this service for three years, and alumnae who are asked to evaluate the weekend rated the service highly. Prior to using applicant, Ms. Leffson had used other services with unsatisfactory results. Ms. Leffson has referred others to applicant in the past and anticipates continuing to do so in the future.

#### DISCUSSION AND CONCLUSIONS

Title II, Article XII, Section 4(b) of the Compact requires that an applicant which desires to obtain a certificate of public convenience and necessity prove its fitness, including operational, financial, and compliance fitness, to provide the proposed service and that the public convenience and necessity require the service which applicant seeks authority to perform. We find that applicant has met its burden of proof in these matters.

The evidence indicates that Mr. Nelson's financial position is stable and that he has sufficient capital in owner's equity to maintain the business. During the period of his temporary authority, applicant has been operating the three vehicles in which the proposed service will be offered. The record shows that the vehicles are well-maintained, adequately insured, and operated by qualified drivers. The service is accessible to the public for rates which appear to be both compensatory and reasonable. For these reasons we find applicant financially and operationally fit.

In his application, Mr. Nelson stated that he had been operating in the Metropolitan District for 15 years unaware that authority from the Commission was required. Without making a finding on that matter, we note that, regardless of Mr. Nelson's state of mind as to the Commission's authority, he did, upon being informed by the Commission of the necessity for authority, retain legal counsel and cease operations until authorized. 3/ Applicant's public witnesses

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3/ Although it appears that Mr. Nelson acted as a broker for transportation during the pendency of his application, such activity is not precluded by the Compact or Commission regulations.

corroborated Mr. Nelson's testimony on this point. 4/ This indicates an ability to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission adopted pursuant to the Compact. Accordingly, we find applicant fit as to compliance.

We further find that the public convenience and necessity require the service which applicant proposes. Four members of the public appeared and testified in support of the application. The testimony of these witnesses indicates a year-round need for transportation throughout the Metropolitan District for groups of varying sizes such that 14-passenger, 19-passenger and 29-passenger vehicles would be required. Without exception the witnesses testified that Mr. Nelson offered service of high quality in comparison with other carriers. The 29-passenger vehicle was attested to as especially cost-effective because it has the capacity to transport a relatively large group of persons without the expense of a full-size bus.

THEREFORE, IT IS ORDERED:

1. That Clarence B. Nelson t/a Mini-Bus Limousine and School Bus Service is hereby granted authority to conduct charter operations between points in the Metropolitan District restricted to vehicles with a manufacturer's designed seating capacity of 29 passengers or less, excluding the driver.

2. That Clarence B. Nelson t/a Mini-Bus Limousine and School Bus Service is hereby directed to file the following: (a) an equipment list indicating place of registration, identification number, and license number for each vehicle, (b) two copies of his WMATC Tariff No. 1, and (c) an affidavit certifying identification of vehicles in compliance with Commission Regulation No. 68 for which purpose WMATC No. 120 is hereby assigned.

3. That unless Clarence B. Nelson t/a Mini-Bus Limousine and School Bus Service complies with the requirements of the foregoing paragraph within 30 days from the date of service of this order, or such additional time as the Commission may direct, the grant of authority made herein shall be void, and this application shall stand

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4/ Applicant is advised of his obligation to be thoroughly familiar with the Compact and the Commission's rules and regulations, including its regulations regarding leasing. In addition, applicant is advised that transportation of passengers for hire in school buses is exempt from this Commission's jurisdiction only when teachers and schoolchildren are being transported to and from school and when the vehicles used in such service are used solely in such service.

denied in its entirety upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director